
**FLORIDA ADMINISTRATIVE CODES
[PETITIONS FOR VARIANCES OR WAIVERS]**

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FLORIDA ADMINISTRATIVE CODES | VARIANCE/WAIVER

CODES: 28-104.001 through 28-104.002

28-104.001 | PURPOSE; CONSTRUCTION

This chapter implements Section 120.542, F.S., by establishing the procedures for granting or denying petitions for variances and waivers of agency rules, and, should be read in conjunction with the provisions of Sections 120.52(18), 120.52(19) and 120.542, F.S.

Rulemaking Authority 14.202, 120.542 FS. Law Implemented 120.542(5)(b)8. FS. History—New 4-1-97, Amended 1-15-07.

28-104.002 | PETITION FOR VARIANCE OR WAIVER

(1) A petition for a variance from or waiver of an agency rule shall be filed with the clerk of the agency that adopted the rule, with a copy to the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400.

(2) The petition must include the following information:

(a) The caption shall read:

Petition for (Variance from) or (Waiver of) Rule (Citation)

(b) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner, if the party is not represented by an attorney or a qualified representative;

(c) The name, address, e-mail address, telephone number, and any facsimile number of the attorney or qualified representative of the petitioner, if any;

(d) The applicable rule or portion of the rule;

(e) The citation to the statute the rule is implementing;

(f) The type of action requested;

(g) The specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the petitioner;

(h) The reason why the variance or the waiver requested would serve the purposes of the underlying statute; and

(i) A statement whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

(3) The petition for a variance or waiver may be withdrawn by the applicant at any time before final agency action.

(4) Upon receipt of a petition for variance or waiver, the agency shall furnish a copy of the petition to any other agency responsible for implementing the rule.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 3-18-98, 2-5-13.

28-104.003 | COMMENTS ON PETITION

(1) Any interested person or other agency may submit written comments on the petition for a variance or waiver within 14 days after the notice required by Section 120.542(6), F.S. The agency shall state in any order disposing of the petition whether comments were received by the agency.

(2) The agency shall maintain the comments as part of the record.

(3) The right to comment pursuant to this section does not alone confer party status in any proceeding arising from a petition for variance or waiver.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 2-5-13.

28-104.004 | PETITION FOR EMERGENCY VARIANCE OR WAIVER

(1) A person requesting an emergency variance from or waiver of an agency rule shall so state in the caption to the petition.

(2) In addition to the other requirements of Section 120.542(5), F.S., and this chapter, the petition shall specify:

(a) The specific facts that make the situation an emergency; and

(b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, F.S.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97.

28-104.005 | TIME FOR CONSIDERATION OF EMERGENCY PETITION

(1) Within 5 days after filing a petition for emergency variance or waiver with the agency clerk, the agency shall give notice of receipt of the petition on its website, if it has one. The agency shall also give notice by any procedure that is fair under the circumstances or provide notice of the petition to the Department of State for publication in the first available issue of the Florida Administrative Register. Any notice under this subsection shall inform interested persons of the right to submit comments. Interested persons or other agencies may submit written comments on the petition for emergency variance or waiver within 5 days after publication of the notice required herein. The notice and comment requirements in this subsection shall not apply if the agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, which final order shall recite with particularity the facts underlying such finding.

(2) The agency shall grant or deny a petition for emergency variance or waiver or determine that the request is not an emergency within 30 days of its receipt by the agency. If such petition is not granted or denied within this time limit, the petition shall be deemed approved unless the time limit is waived by the petitioner.

(3) If the agency decides that the situation is not an emergency, the agency shall so notify the petitioner in writing, and the petition shall then be reviewed by the agency on a non-emergency basis as set forth in Section 120.542(7), F.S.

(4) The duration of an emergency variance or waiver shall be determined by the agency.

(5) The agency shall issue a written order granting or denying the petition. The order shall state the facts and reasons supporting the agency's action.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 1-15-07, 12-24-07, 2-5-13.

28-104.0051 | REVOCATION OF EMERGENCY OR TEMPORARY VARIANCE OR WAIVER

(1) Upon receipt of evidence sufficient to show that the recipient of an order granting an emergency or temporary variance or waiver is not in compliance with the requirements of that order, the agency shall issue an order to show cause why the emergency variance or waiver should not be revoked.

(2) The recipient of an emergency or temporary variance or waiver shall respond to the order to show cause why the emergency variance or waiver should not be revoked within 15 days of the mailing date of the order to show cause. Failure to timely respond shall result in a final order revoking the emergency or temporary variance or waiver.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 3-18-98.

28-104.006 | REQUEST FOR INFORMATION

(1) When a person inquires of the agency about the possibility of relief from any rule requirements or the remedies available pursuant to Section 120.542, F.S., the agency shall provide the information required by Section 120.542(4), F.S., within 15 days of the inquiry.

(2) In its response to a request for information, the agency shall indicate the name, address and e-mail address of the appropriate contact person for additional information and shall indicate how a petition for variance or waiver is filed with the agency.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.542(4) FS. History—New 4-1-97, Amended 2-5-13.

APPENDIX

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CONTACT INFORMATION

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